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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 KAREN GOLINSKI)

15 Plaintiff,)

16 v.)

17 THE UNITED STATES OFFICE OF)
PERSONNEL MANAGEMENT,)

18 Defendant.)
19)
20)

No. C 4:10-00257-SBA

**REPLY BRIEF IN SUPPORT OF
DEFENDANT'S ADMINISTRATIVE
MOTION FOR LEAVE TO FILE AN
OPPOSITION BRIEF OF 36 PAGES**

21 Plaintiff has opposed defendant's administrative motion for leave to file a 36-page
22 brief. As defendant has stated and plaintiff does not dispute, this case concerns important
23 matters of apparent first impression. See also Order, Docket Entry No. 22, at 2 (noting
24 this case involves important issues). Plaintiff does not allege she will suffer any prejudice
25 if the Court considers defendant's full articulation of its arguments; defendant, however,
26 will be prejudiced if it is forced to truncate those arguments. Therefore, defendant, the
27 U.S. Office of Personnel Management ("OPM"), respectfully requests that the Court
28

1 consider its 36-page opposition brief. Defendant does not object to plaintiff's request that
 2 she be permitted one extra week and 11 extra pages in which to respond to defendant's
 3 substantive arguments that plaintiff is not entitled to an emergency injunction or an order
 4 of mandamus against OPM.

5 Plaintiff is correct that defendant should have filed its motion for leave earlier and, as
 6 defendant has noted, undersigned counsel regrets his error. See Administrative Motion for Leave
 7 to File a 36-Page Opposition Brief, Docket Entry No. 23, at 3 n.1. Nonetheless, the Court should
 8 exercise its equitable discretion to consider all of defendant's arguments. See, e.g., Tobar v.
 9 United States, Civ. No. 07-817, 2008 WL 4350539, *2-*3 (S.D. Cal. September 19, 2008)
 10 (granting motion to file a reply brief in excess of the page limit although the reply was filed
 11 before the Court ruled on the motion for leave). Defendant agrees that the page limits contained
 12 in the Local Rules of this Court serve important purposes and apply generally to all cases. But
 13 this case, in which the Court is called upon to consider constitutional conclusions reached by the
 14 Chief Judge of the Circuit, is not a typical one. Moreover, an extension of the page limit is
 15 reasonable here where defendant's 36-page opposition (filed without attachments) responds to 91
 16 pages put forth by plaintiff. See Docket Entry Nos. 8-11.¹

17 The interests of justice are best served by the Court's consideration of this matter based
 18 on a full airing of the parties' arguments. As defendant has stated, it will be prejudiced if it is
 19 forced to truncate its arguments (see Docket Entry No. 23, at 2), whereas plaintiff has not
 20 asserted that she will suffer any prejudice if she must respond to defendant's substantive
 21

22 ¹ As plaintiff admits, she relies upon her 13-page brief as well as the underlying rationale
 23 contained in 24 pages of Orders issued in the Ninth Circuit's administrative Employee Dispute
 24 Resolution ("EDR") process by Chief Judge Kozinski. See Plaintiff's Opposition to
 25 Administrative Motion, Docket Entry No. 26, at 2. Plaintiff also relies upon her own declaration
 26 and exhibits, which total an additional 47 pages not including cover sheets (Docket Entry No. 9),
 27 as well as the declaration of plaintiff's counsel and its four exhibits, which total 10 pages,
 28 including 3 pages of Chief Judge Kozinski's orders in the EDR proceeding (Docket Entry No.
 10). See also Plaintiff's Request for Judicial Notice (Docket Entry No. 11). These materials thus
 total at least 91 pages filed or incorporated by plaintiff in support of her motion for a preliminary
 injunction.

arguments. The Court should, accordingly, consider defendant's opposition brief in full. See
Tobar, Civ. No. 07-817, 2008 WL 4350539, *2-*3 (granting the United States' motion to file a
 reply brief in excess of the page limit where the government "contend[ed] that it 'can not
 adequately respond [within the Local Rule page limit] to the arguments properly contained in the
 opposition'" filed by the plaintiff, although the government had filed its brief before the court
 ruled on the government's motion for leave); cf. TCI Group Life Ins. Plan v. Knoebber, 244 F.3d
 691, 696 (9th Cir. 2001) (in ruling on whether to set aside default judgment, whether it would
 prejudice the plaintiff is a factor to consider).

For all of these reasons, OPM respectfully asks that the Court grant its pending Motion
 for Administrative Relief (Docket Entry No. 23) and consider its 36-page opposition to plaintiff's
 motion for an emergency injunction.²

Dated March 3, 2010

Respectfully Submitted,

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² If the Court denies defendant's administrative motion, defendant respectfully requests it
 be afforded a reasonable amount of time in which to file a 25-page opposition brief.